

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant/owner: John Gerber
123 Harlow Drive
Amherst, Ma 01002

Date application filed with the Town Clerk: April 8, 2010

Nature of request: For a Special Permit to keep up to five (5) chickens, hens only, under Section 5.014 of the Zoning Bylaw

Address: 123 Harlow Drive (Map 5D, Parcel 277, R-N Zoning District)

Legal notice: Published on April 28, 2010 and May 5, 2010 in the Daily Hampshire Gazette and sent to abutters on April 23, 2010

Board members: Tom Simpson, Hilda Greenbaum, Tom Ehrgood

Submissions:

- Project Application Report, prepared by the Planning Department, dated May 7, 2010;
- ZBA application, filed with the Town Clerk on April 8, 2010;
- A copy of the “request” including a location map, completed Management Plan, existing conditions photographs;
- Two (2) letters of support from Mary Ellen Salvini, 117 Harlow Drive and Michael & Lynn Sussman, 129 Harlow Drive and one (1) email in support of the application from Eve Vogel, 135 Harlow Drive;
- Letter from Ruth Washington, 30 Beech Street, dated May 8, 2010 opposing the application;
- Letter from Tom Flittie and Janet Lansberry, 49 Ridgecrest Road, dated May 13, 2010, in support of the application;
- Town GIS, aerial photograph, submitted by staff;
- A series of 12 photographs submitted by Pamela and David Marsh Williams.

Site Visit: May 12, 2010

Tom Simpson, Hilda Greenbaum and Tom Ehrgood met the applicant at the site. The Board members observed the following:

- The location of the feed material, stored in plastic rodent-proof containers in the garage;
- The location of the coop and stationary run near the west property line and in between the back of the house and the swimming pool;
- The location of the compost pile near the north property line where the house on neighboring property to the north (Map 5D, Parcel 113) was clearly visible;
- A significant amount of vegetation creating a vegetated border between the two properties.

Public Hearing: May 13, 2010

Mr. Gerber presented the application. He stated the following:

- They are requesting a Special Permit to keep 3-5 chickens, hens only, in a predator-protected hen house and enclosed run;
- The permanent coop is 2 feet x 4 feet and the run is 4 feet x 16 feet. The portable hen house is surrounded with a fence less than 3 feet high and 50 feet in circumference, about 200 square feet to allow the hens to scratch in the grass;
- The feed is stored in the garage in rodent-proof containers and all waste is composted;
- They have had chickens for 6 or 7 years, but did not know a permit was required until they learned of the requirement in a hearing for an application before the Conservation Commission;
- The existing coop is located in the northwest corner of the property between the back of the house and the pool as shown on the GIS map;
- They are seeking to keep up to five (5) chickens because it allows for higher likelihood of survival over the winter;
- His family consumes the eggs laid by the chickens but often gives away extras to family, friends and neighbors.

Referring to the letter from Ruth Washington, Mr. Ehrgood asked the applicant whether he has had any rodent problems on his property and whether he is familiar with the subject of chicken-borne pathogens. Mr. Gerber replied that he has never had any problems with rodents in connection with the keeping of chickens because he keeps the feed in rodent-proof containers. Regarding pathogens, Mr. Gerber stated that there are a number of pathogens, but these are typically associated with the keeping of large numbers of chickens in close proximity to one another. He stated that his chickens are kept with ample space and are fed healthy feed items, and thus do not require the use of antibiotics and do not create chicken-borne pathogens.

Mr. Gerber identified the location of Ms. Washington's property on the Town GIS aerial photograph and stated that she had never complained about the chickens before she got the notice in the mail.

Pamela and David Marsh Williams, 158 Rolling Ridge Road, stated the following:

- Their property is directly behind the Gerber's residence;
- The people who support the application see only the front of the house, but they view the backyard where the chickens are allowed to go, and where the compost pile is located;
- They referred to Item 4 in Ruth Washington's letter, which notes the unkempt and unsightliness of the vegetation along the property line, and complained of the direct exposure to the sounds and smells of the fowl, including turkeys and chickens, kept by Mr. Gerber;
- They are directly affected because their property abuts Mr. Gerber's property;
- They noted that, last year, the chickens were in the section of Mr. Gerber's property that was directly adjacent to theirs and not in the space where the hen house and run are currently located. This location affected their enjoyment of their property through both noise and odors.

Mr. Gerber stated that the chickens had been moved around their property in the portable fence and that they had raised turkeys as recently as last year.

Mr. Gerber stated he will not be keeping any more turkeys and hadn't known that the neighbors had concerns with it and acknowledged that turkey odor is significantly greater than that of chickens.

The Board members confirmed the following:

- The location of the compost heap and the chickens is relevant, but the condition of the property line vegetation is not relevant to the application;
- The applicant maintains a permanent coop and run area between his house and pool and has requested permission to utilize a movable coop and temporary fenced area in the vicinity of the garden in the south west section of the property;
- The applicant agreed to move the compost pile and allow the chickens to be in a designated area as identified on the Town GIS aerial photograph.

Mr. Ehrgood MOVED to close the evidentiary portion of the public hearing. Ms. Greenbaum seconded the motion and the Board VOTED unanimously to close the public hearing.

Public Meeting:

Specific Findings:

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses and other uses in the district. The keeping of chickens is allowed, under a Special Permit, as an accessory use in the R-N Zoning District. To address the concerns of two neighbors, a condition of the permit restricts the location of the chickens and the compost pile to those areas on the property furthest from abutters.

10.382, 10.383 and 10.385 – The proposal will not constitute a nuisance due to air pollution, lights or visually offensive structures; will not be a substantial inconvenience or hazard to abutters; and reasonably protects adjoining premises. A condition of the permit requires any wastes produced by the chickens to be composted at least once per week to minimize odors. The location of the temporary coop and outdoor run must be located further from adjacent properties to reduce the visibility of the chickens. The feed supply for the chickens must be stored in rodent and vermin-proof containers in the garage to reduce the likelihood of causing rodent problems.

10.384 - Adequate and appropriate facilities will be provided for the proper operation of the use. A condition of the permit requires the relocation of the compost pile to a new location that is further from adjacent property owners. The feed necessary for the chickens will be stored in rodent and vermin-proof containers in the garage.

10.392 – The proposal provides adequate landscaping, including the screening of adjacent residential properties. A condition of the permit requires the relocation of the compost pile and outdoor run to a location on the property that is less visible from adjacent properties. The remainder of the property contains a significant amount of vegetation along the northeast, east and south property line to prevent the use from being clearly visible to the neighbors.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw and the goals of the Master Plan. The proposal promotes the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst. The proposal to keep chickens is in harmony with the general purpose and intent of several goals and objectives of the Master Plan.

Specifically, the keeping of chickens by the applicant will further the intent of sustainability, as defined, by meeting the current needs of producing local food, without compromising future generations. Additionally, the proposal helps promote, granted on a small scale, local agriculture and creation of locally produced food in accordance with objective LU.4, which is to “Protect key farmland and farming in Amherst” and helps to maintain the viability of Amherst’s agricultural community.

Public Meeting – Zoning Board Decision

Mr. Simpson moved to APPROVE the application with conditions. Ms. Greenbaum seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2010-00011, to keep up to five (5) chickens, hens only, under 5.014 of the Zoning Bylaw, as applied for John Gerber, at 123 Harlow Drive (Map 5D, Parcel 277, R-N Zoning District), with conditions.

TOM SIMPSON

HILDA GREENBAUM

TOM EHRCOOD

FILED THIS _____ day of _____, 2010 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2010.
NOTICE OF DECISION mailed this _____ day of _____, 2010
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2010,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2010-00011, to keep up to five (5) chickens, hens only, under 5.014 of the Zoning Bylaw, as applied for John Gerber, at 123 Harlow Drive (Map 5D, Parcel 277, R-N Zoning District), with the following conditions:

1. There shall be no more than five (5) chickens (hens, only) on the premises and at no time shall there be any roosters or other poultry.
2. The coop shall be maintained substantially in accordance with the plans submitted and shall be permanently located in the north west corner of the property, as shown on the Town GIS aerial photograph approved by the Zoning Board of Appeals on May 13, 2010.
3. The keeping of chickens shall be in accordance with the Management Plan approved by the Zoning Board of Appeals approved on May 13, 2010.
4. A temporary coop and movable fenced area of no greater than 200 sq. ft. may be erected in the area identified on the Town GIS aerial photograph approved by the Zoning Board of Appeals on May 13, 2010. Said fence shall be of a height that is sufficient to contain the chickens, but shall not exceed 5 feet in height;
5. All feed supply not within the coop, shall be kept in rodent and vermin-proof containers and shall be stored within the owner's garage.
6. Any chicken waste products shall be either removed from the property, or properly composted at least weekly to prevent noxious odors. The compost pile shall be located in the area identified on the Town GIS aerial photograph approved by the Zoning Board of Appeals on May 13, 2010.
7. This permit shall expire upon change of ownership or tenancy of the property.

THOMAS SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE